

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs.	Rulemaking 12-02-009 (Filed February 16, 2012)
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**DECISION GRANTING INTERVENOR COMPENSATION TO  
WOMEN'S ENERGY MATTERS FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 12-12-036**

<b>Claimant: Women's Energy Matters (WEM)</b>	<b>For contribution to Decision (D.) 12-12-036</b>
<b>Claimed: \$6,795</b>	<b>Awarded: \$4,608 (reduced 32%)</b>
<b>Assigned Commissioner: Michael R. Peevey</b>	<b>Assigned ALJ: Jessica T. Hecht</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	Decision Adopts a Code of Conduct and Enforcement Mechanisms Related to Utility Interactions with Community Choice Aggregators, Pursuant to Senate Bill 790, and closes proceeding.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

Claimant		CPUC Verified
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:	May 16, 2012 <sup>1</sup>	Correct
3. Date NOI Filed:	May 21, 2012	Correct
4. Was the NOI timely filed? WEM's motion to late-file its NOI was granted (Assigned Commissioner's and		Yes

<sup>1</sup> Assigned Commissioner's and Administrative Law Judge's Scoping Memo and Ruling at 10, dated August 9, 2012.

ALJ's Scoping Memo and Ruling dated 8-9-12 at page 13, item 9) and the document was filed effective May 21, 2012.		
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:		This decision, see comments below.
<p><b>CPUC Comments:</b></p> <p>Women's Energy Matters (WEM) is a non-profit organization working for a rapid transition to a clean, efficient, renewable energy system that is responsive to local communities and sensitive to environmental and economic justice.</p> <p>WEM's articles of incorporation and bylaws were submitted in this proceeding on 8/23/12 in response to an email. The relevant portion of the articles of incorporation at 1 state "[t]hat the specific purposes for which this corporation is organized are (i) to create an international network of people, particularly but not exclusively women, who will educate themselves and others about all aspects of energy, including personal energy and food as well as technological energy, focusing on the need to make a rapid transition away from energy forms that damage the personal and ecological environment, and towards energy forms that can be sustained indefinitely and promote jobs, peace, prosperity and democracy, (ii) to develop and implement renewable energy and energy efficient projects, (iii) to represent the interest of consumers in administrative and judicial proceedings concerning public utilities matters, and (iv) to carry on other charitable and educational activities associated with these purposes as permitted by law.</p> <p>According to WEM, it has been representing California ratepayers before the CPUC since 2001. WEM represents the perspective of residential and small commercial customers (particularly women and low-income customers) - all of whom tend to be underrepresented in CPUC proceedings. WEM states that it has no direct economic interest in the outcomes of the proceeding.</p> <p>WEM qualifies as a Category 3 customer because it represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent "small commercial customers" (§ 1802 (h)) who receive bundled electric service from an electrical corporation (§ 1802 (b)(1)(C)), or to represent another eligible group.</p>		
6. Has the Claimant demonstrated customer or customer-related status?		Yes
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
7. Based on ALJ ruling issued in proceeding number:		This decision, see comments below.
<p><b>CPUC Comments:</b></p> <p>WEM represents the interests of residential customers who are underrepresented in CPUC proceedings because they are residential or small business ratepayers (primarily women, including low-income women and women of color). The ratepayers WEM represents are typically residential and small commercial utility customers. WEM submits that the economic</p>		

interest of the ratepayers it represents in the proceeding, are small in comparison to the cost of effective participation. WEM has received no grant or other funding to offset the cost of its participation in this proceeding.

This showing of significant financial hardship is substantiated by WEM's presentation: "[I]n the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding." (§ 1802(g)).

The estimated cost of WEM's participation substantially outweighs any benefits to an individual ratepayer WEM represents. Accordingly, the ratepayer WEM represents will not likely reap financial benefits that would near the cost for WEM to effectively participate.

8. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
9. Identify Final Decision:	D.12-12-036	Correct
10. Date of Issuance of Final Order or Decision:	12-28-2012	Correct
11. File date of compensation request:	2-26-2013	Correct
12. Was the request for compensation timely?		Yes

## PART II: SUBSTANTIAL CONTRIBUTION

### A. Claimant's description of its claimed contribution to the final decision:

<b>Contribution</b>	<b>Specific References to Claimant's Presentations and to Decision</b>	<b>Showing Accepted by CPUC</b>
Marketing & Lobbying. WEM asked the Commission to clarify that the rules & enforcement procedures created in this proceeding will apply to incidents where a utility uses its energy efficiency (EE) programs as a marketing tool (or bribe) to discourage the development of Community Choice Aggregators.	See Scoping Memo at p. 7 where there is a discussion of WEM's request for a hearing: "The rules adopted in this proceeding will apply to utility management of EE programs as well as other activities including more general marketing and outreach. Similarly, the complaint procedures developed through this proceeding will apply to complaints related to communications or interactions under these rules, whether related to EE administration or other activities."  This was an important clarification	Yes

	because the language of Proposed Rule 1(a), contained in the Order Instituting Rulemaking (OIR) at p. 5 could lead one to believe that the term “market” might exclude communications related to “customer energy efficiency, demand response,... renewable energy rebate... and other similar CPUC-approved or authorized programs” from the rules and enforcement procedures created by this proceeding.	
2. WEM asked the Commission to tighten up the rule regarding answering and asking customer questions, which it did.	<p>“WEM also asserts that the prohibition on lobbying contained in the modified draft rules is not strong enough... Similarly, parties expressed concerns that utilities could prompt their customers to ask questions about the relative merits of the utilities and a [Community Choice Aggregation] CCA in order to answer those questions in ways that would benefit the utility... In response to these comments, we have modified the exemption for utility communications related to specific programs to clarify that the exemption covers only formal communications related to Commission-authorized programs.” D.12-12-036, pp. 10-11.</p> <p>WEM pointed out:  “These often purported to be “truthful and responsive answers to specific inquiries” — for example the offers to Novato. The “inquiry” that initiated more than two years of bribery in that instance was simply the invitation to [Pacific Gas and Electric Company] PG&amp;E to present its views on CCAs to the Council.” 9-10-12 WEM Reply, p. 2.</p>	Yes
WEM persuaded the Commission to explicitly ban the provision of “special	Based on these definitions, offers of special services to a local	

<p>services” to dissuade cities and counties from becoming CCAs. WEM provided many specific examples from our eyewitness accounts of PG&amp;E’s offers to Marin Co., and Novato in particular.</p>	<p>government within the territory of a CCA or prospective CCA, or providing a government agency or representative with information other than factual representations of utility services, would violate these rules (see Rule 17). Prompting a customer to ask about the advantages of a utility’s services or rates compared to those of a CCA would similarly violate these rules. This is true whether or not such interactions contain an explicit message discouraging participation in a CCA, or even a specific mention of a CCA. D.12-12-036, pp. 11-12. WEM offered to provide the Commission with a WEM video documentary (or a transcript of it): “A full transcript and video of PG&amp;E’s presentation at the June 8, 2009 meeting of the Sustainability Committee of the Novato City Council, featuring PG&amp;E chief regulatory representative in EE proceedings, Chris Warner, along with PG&amp;E’s Governmental Affairs representative for the North Bay Josh Townsend (formerly Assembly member Jared Huffman’s aide) and Orlando Smith from the Dept. of Service Analysis) offered a special partnership consisting of specific offerings from most of the company’s EE programs as well as solar, plus other assistance.” 3-26-12 WEM Comment on the OIR, pp. 3-4.</p> <p>“In the GRC, PG&amp;E’s lawyers argued that the offers to Novato did not constitute marketing against CCAs (or a failure to “cooperate”), although they admitted (off the record) that the company was promoting their own administration</p>	<p>Rules as proposed already banned such activities. The decision clarified these rules, partly in response to WEM’s examples.</p>
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	of EE, and marketing against CCA administration of EE. Similarly, the Commission needs to address the question of what constitutes “quid pro quo.” When PG&E told the Novato Sustainability Committee that they should “keep their eggs in PG&E’s basket” nobody doubted that this was a reference to rejecting CCA. But PG&E lawyers say otherwise.” <i>Ibid</i> , p. 4.	
<p>WEM offered a variety of solutions for the misuse of EE, including the Commission awarding all ratepayer EE funds to the CCA (as Assembly Bill (AB) 117 envisioned), and/or banning PG&amp;E from administering EE programs in CCA territories, because of the many improper EE offers it made in Marin, and the difficulty of monitoring the company’s offers that were made behind closed doors.</p> <p>The Commission has ruled that parties have “enriched the record” by such recommendations, and fully compensated them, whether or not any of the intervenor’s recommendations were adopted.</p>	<p>WEM’s proposed solutions included awarding all ratepayer EE funds to the CCA (as AB 117 envisioned), and/or banning PG&amp;E from administering EE programs in CCA territories, because of its history of misuse of EE to oppose CCAs — for example, 3-26-12 WEM Comments on OIR, pp. 2-3, 9-10 WEM Reply, pp. 6-7.</p> <p>[We note that the extent of EE funds that CCAs should or should not receive has also been litigated in R.09-11-014 and a decision on that issue is still pending.]</p> <p>The decision declined to adopt this particular recommendation, although it acknowledged that we raised serious issues:</p> <p>“We understand the concerns expressed by the CCA Alliance and WEM about the exception contained in this rule allowing utilities to offer government agencies Commission-approved programs available to bundled customers. It is possible that the availability of such programs could influence an agency’s choice to maintain bundled utility service rather than receive some service through a CCA.”</p> <p>D.12-12-036, p. 23.</p>	The decision acknowledged WEM’s concerns.
WEM expressed concern that it may take too long to address prohibited activities in a timely way through either	The decision left the timing of complaints and audits as is, but acknowledged our concerns, added a	Yes

<p>the complaint procedure or the Audit, resulting in potential harm to CCA formation. The Commission acknowledged and took steps to address these concerns.</p>	<p>“meet and confer” requirement in the complaint procedure and pointed out additional options: “WEM recommends shortening the 180-day timeframe established in Senate Bill (SB) 790 for resolving the complaints, contending that incurable damage could be done during the six-month processing period for the complaint.... In response to these comments, we have revised the meet-and-confer requirement in the complaint procedure to require a CCA to provide a sworn declaration that it has at least attempted to meet and confer with the utility about the subject of the complaint before making a formal filing. This avoids the potential for a utility to attempt to delay the filing of a complaint by refusing to confer with a CCA, while still ensuring that the utility is notified of any problems before formal action is initiated.... We also remind parties that mediation under the Commission’s Alternate Dispute Resolution Program may be available for both formal Commission proceedings and, in certain cases, to disputes expected to lead to formal Commission proceedings. The Rules contained in Attachment 1 provide appropriate flexibility to allow the Commission to process complaints efficiently and expeditiously, while ensuring that the due process rights of parties are preserved.” D.12-12-036, pp. 30-31.</p>	
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**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

Claimant		CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) <sup>2</sup> a party to the proceeding?	Yes, but not active.	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes.	Correct
c. If so, provide name of other parties: Marin Energy Authority (MEA), the City and County of San Francisco (CCSF), CCA Alliance		Correct
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:  WEM had a unique perspective, as we represent <i>ratepayers</i> in CCA jurisdictions, while the other parties with similar views — MEA, CCSF, and the CCA Alliance — represent CCAs, government entities, and suppliers of CCAs. WEM has extensive first-hand knowledge of certain marketing and lobbying issues, especially the misuse of EE funds. To the extent that we all commented to some extent on these problems, the depth of WEM's understanding of these issues is apparent. Where there was any duplication, WEM supplemented and complemented these other parties' comments or vice versa.		We make no reductions to WEM's claim for duplication of effort with other parties.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION****A. General Claim of Reasonableness (§§ 1801 & 1806):**

a. Claimant's explanation as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	CPUC Verified
The cost of WEM's participation is reasonable, considering the complexity of the Code of Conduct and other issues in this case. WEM submits that it had the advantage of having lived through the difficult formation of the Marin CCA, as a leading community advocate, and is familiar with the reasons for passage of the legislation underlying this case, SB 790. In addition, WEM is a long-time party to all EE proceedings at the CPUC, and has supported the rights of CCAs to EE funds in many filings in those proceedings since 2003. This body of work allowed WEM to assist the Commission's understanding of the issues.	After the reductions we make to WEM's claim, the remaining hours are reasonable and worthy of compensation.
b. Reasonableness of Hours Claimed.  WEM's hours spend on this case were reasonable in relation to the depth of	WEM's hours are reasonable and commensurate

<sup>2</sup> DRA name changed.

knowledge we provided to the Commission.	with the work performed.																		
<p><b>c. Allocation of Hours by Issue</b></p> <p>In this Request, WEM provides an approximate time-allocation by issue pursuant to Rule 17.4(b)(3) and (4) and D.98-04-059 (at 47-48). Issue Allocation:</p> <table><tr><td>GP</td><td>28%</td><td>General Participation</td></tr><tr><td>M&amp;L</td><td>8%</td><td>Marketing &amp; Lobbying (generally)</td></tr><tr><td>EE</td><td>40%</td><td>IOU Misuse of Energy Efficiency &amp; Opposing CCAs right to administer EE</td></tr><tr><td>FAIR</td><td>8%</td><td>Fair competition</td></tr><tr><td>N-MKT</td><td>8%</td><td>Non-Marketing IOUs (including structure of Marketing IOUs</td></tr><tr><td>ENF</td><td>8%</td><td>Enforcement (including complaints, audits)</td></tr></table>	GP	28%	General Participation	M&L	8%	Marketing & Lobbying (generally)	EE	40%	IOU Misuse of Energy Efficiency & Opposing CCAs right to administer EE	FAIR	8%	Fair competition	N-MKT	8%	Non-Marketing IOUs (including structure of Marketing IOUs	ENF	8%	Enforcement (including complaints, audits)	WEM has properly allocated its time by major issue, in accordance with Rule 17.4. <sup>3</sup>
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ENF	8%	Enforcement (including complaints, audits)																	
<p><b>d. Hourly rate for Barbara George.</b></p> <p>Barbara George’s rate has remained at \$175 for many years. See, for example, D.12-02-034, which awarded a rate of \$175 for 2010 and 2011, and D.10-09-015, which awarded a rate of \$175 for 2009 and 2010. Resolution ALJ-281 allowed a 2.2% COLA increase. WEM requests an increase of \$5 for Barbara George, to \$180/hr. for 2012.</p>	We approve the 2012 hourly rate requested by WEM.																		

**e. Specific Claim:\***

Claimed						CPUC Award		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
B. George	2012	29.0	180	D.12-02-034 and Resolution ALJ-281	5,220	22.6	180	4,068
Subtotal: \$5,220						Subtotal: \$4,068		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
B. George	2012	17.5	90	½ rate adopted here	1,575	6.0	90	540
Subtotal: \$1,575						Subtotal: \$540		
TOTAL REQUEST: \$6,795						TOTAL AWARD: \$4,608		

<sup>3</sup> See D.98-04-059 and D.85-08-012.

\*The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

\*\*Travel and Reasonable Claim preparation time are compensated at ½ of preparer's normal hourly rate.

**f. CPUC Adoptions and Disallowances:**

Adoptions	
2012 hourly rate for B. George	We apply the 2.2% COLA (rounded to nearest \$5 increment), approved in Resolution ALJ-281, to George's 2011 rate of \$175 in D.12-02-034. The resultant hourly rate is \$180. We adopt this 2012 rate here.
Disallowances	
Disallowance of Clerical Work	WEM's timesheets indicate multiple (5) entries for the "filing" of documents. This is a non-compensable clerical task. <sup>4</sup> In addition, WEM has lumped this "filing" time with its time spent "drafting" the document. <sup>5</sup> We elect to take the total hours listed for these tasks, and divide them in half to determine the amount of hours appropriate for disallowance. We disallow a total of 6.4 hours of George's 2012 hours (.38 hours on 3/26/12; 1.25 hours on 8/26/12; 1.5 hours on 9/10/12; 3.26 hours on 12/16/12.)
Excessive hours on NOI and Compensation Claim Preparation	WEM requests 17.5 hours to prepare its NOI and Compensation Claim. The hours are excessive given the fact that the claim covers only one decision in a proceeding that spanned the course of approximately 10 months. If approved as requested, this would be equal to 60% of its participation time. We approve the more reasonable amount of time of 6 hour to complete this work and disallow the remaining hours for excessiveness. <sup>6</sup>

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the Claim?</b>	No
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<sup>4</sup> See D.11-07-0214 and D.11-05-044.

<sup>5</sup> This practice violates the provisions of Rule 17.4 as well as the Commission's decisions setting guidelines for intervenor compensation matters (see, for example, D.98-04-059, p. 51).

<sup>6</sup> We note that WEM claims many hours for reviewing time sheets, drafting issues, etc. The intervenor compensation website has a downloadable "Updated Spreadsheet Supporting Claim" document available at: <http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/> and may provide the most expeditious method to complete this task.

<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?</b>	Yes
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### **FINDINGS OF FACT**

1. Women's Energy Matters has made a substantial contribution to D.12-12-036.
2. The requested hourly rates for Women's Energy Matters representatives, adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$4,608.

### **CONCLUSION OF LAW**

The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

### **ORDER**

1. Women's Energy Matters is awarded \$4,608.
2. Within 30 days of the effective date of this decision, The CPUC's Intervenor Compensation Fund shall pay Women's Energy Matters the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 12, 2013, the 75<sup>th</sup> day after the filing of Women's Energy Matters request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision:	D1212036	
Proceeding:	R1202009	
Author:	ALJ Jessica T. Hecht	
Payer:	CPUC's Intervenor Compensation Fund	

**Intervenor Information**

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Women's Energy Matters	2-26-12	\$6,795	\$4,608	No	Disallowance of clerical work; excessive hours for compensation matters.

**Advocate Information**

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Barbara	George	Advocate	Women's Energy Matters	\$180	2012	\$180 <sup>7</sup>

**(END OF APPENDIX)**


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<sup>7</sup> Applies the 2.2% COLA adopted in Resolution ALJ-281.